

U.S. Extractive Industries Transparency Initiative (USEITI)

Public Comment Period Summary

April 23, 2012

I. Background

The U.S. Department of the Interior (DOI) conducted a public comment period from February 25 – April 9, 2012 to gather input on formation of the multi-stakeholder group (MSG) that will be responsible for U.S. implementation of the Extractive Industries Transparency Initiative (USEITI). During this period, in March 2012 public listening sessions were held in St. Louis, Missouri; Denver, Colorado; Houston, Texas; and Washington, D.C and facilitated by the Consensus Building Institute (CBI), an independent, non-profit organization. CBI has prepared this summary of the public listening sessions and written comments that were submitted, which can be found below and attached. Public comments included in this document, in addition to findings from individual stakeholder interviews, will inform a series of MSG formation options to be published and available for public comment later this spring.

The public was invited to provide comment on the following questions, as stated in the February 24th and March 8th Federal Register notices seeking public comment and announcing public listening sessions:

- *The EITI requires a multi- stakeholder group to be formed to oversee implementation. Who are the key sectors or stakeholders that need to be involved in the multi-stakeholder group?*
- *How best can a balance of interests and perspectives, be achieved in the formation of the multi-stakeholder group?*
- *In your opinion, what are the key attributes of both a successful and high functioning multi-stakeholder group and the successful implementation of USEITI?*
- *What key concerns, if any, do you have about implementing the USEITI process?*

At public listening sessions, DOI officials began with a presentation on USEITI, including an overview of the global initiative, a snapshot of U.S. extractive revenue on federal lands, and guidelines for the MSG. Following the presentation, members of the public were asked to provide comments. The presentation is attached to this document in Appendix B and is posted online at the Department of the Interior's EITI website - <http://www.doi.gov/eiti>

II. Summary of Key Themes

Most public comments raised questions about the EITI relationship between EITI and existing U.S. policies, scope of the initiative, criteria for MSG formation and representation, and education and outreach. Several comments noted the importance of U.S. global leadership in seeking EITI compliance. Many noted the challenge of implementing EITI in the

U.S. given the country's federal system, rich and diverse natural resources, public and privately held rights, tribal sovereignty, and a diverse industry.

Relationship between EITI and existing U.S. policies. Many comments inquired about the relevance of EITI to Section 1504 of the Dodd-Frank Act, confidentiality statutes, and current ONRR revenue collection. Several registered concerns about potential duplication of reporting efforts and questioned the added value of EITI over existing practices. Representatives from various sectors expressed the importance of developing a standard that is both meaningful and sustainable. In addition to citing regulation relevant to USEITI scope, some responses noted the importance of standing up a legally defensible MSG that comports with EITI principles of inclusivity and independence. Some asked questions about how enforcement would work if the approach was voluntary.

Scope of the initiative: lands, industries, and payments. At public listening sessions, members of the public sought to clarify the level of granularity required in EITI reporting and what types of lands and industries might be added to the current reporting regime. They also asked if EITI would include or expand later to tax payments, state revenues and receipts, or other sources of revenues. It was asked if hard rock precious minerals such as gold and silver would be included. DOI representatives noted that the MSG will be charged with defining these parameters.

Criteria for MSG formation and representation. The public offered multiple suggestions regarding the size, skills and expertise needed for an efficient and representative MSG. Suggested criteria for participation in the MSG included technical knowledge of the reporting process, ability to represent larger constituencies, and awareness of the local impacts of production. Some experience with EITI processes abroad was noted by some as an important qualification and for others as potentially less important to the unique U.S. process. Some participants recommended including a combination of trade associations and individual companies in order to ensure proper representation in the industry sector, and prioritizing civil society groups representing regions most directly affected by production.

Education and outreach. Members of the public underscored the importance of reaching out to tribes, domestic and smaller companies, and regional organizations to build awareness about EITI and its potential practices and benefits. Specific suggestions included widely disseminating the DOI presentation, hosting information webinars, convening additional public listening sessions in targeted locales, and offering draft options for MSG formation on which the public can comment rather than asking general questions.

III. Public Comments by city¹

The following summarizes questions and comments by city where the listening session was held.

ST. LOUIS – MARCH 19, 2012

- EITI should build on the existing data; do not want to grow industry any more than to grow government.
- What is industry's obligation to EITI as they produce minerals and make federal land payments?
- What part of the jigsaw puzzle do companies fit in, and as a company, what are their obligations to the members of the public?
- The MSG should comprise knowledgeable and experienced people in all the sectors. These would be people who are into the day-to-day process of reporting and understand the payment aspect of the work.
- The MSG members should not develop EITI in a way that would cause industry to regress, or go backwards, and should be careful about developing a standard of little value.
- DOI Response: The EITI website provides detailed information on the EITI process. At this point, DOI is gathering the information needed to stand-up a US MSG. The MSG will discuss these issues and make the final decisions related to all of these questions.

DENVER – MARCH 21, 2012

- Know that [the states] would like to be involved in the process. Has been working for 13 years with the tribes; they are always concerned about getting information. Would be good to have tribal involvement. Tribes tend to share information with states more than they share information with each other. Hasn't heard the tribes talking about this so think that the tribes aren't currently aware that the process has started.
- It's important to have someone for the stakeholder group to have a member of a private sector company who is familiar with the payments they make; also someone who is directly affected by the mines; need to see how the payments to the government and on-the-ground realities work.
- Where are we in the process? Will EITI be using existing processes? How will they decide who the contracted person will be to reconcile things and will they report their results to the general public? Is this reporting separate and are there penalties associated with this kind of reporting? Seems like processes and tools are already in place.
- Monthly or annual reporting? Anything related to EPA reports currently being done? Are we looking at dollars only? What types of information would be reported? In addition to

¹ Comments included herein are a detailed account of what was said but not an exact transcript.

the 20/14 or replacing the 20/14? So not duplicating efforts. What about current tax exemptions in place for the federal government?

- Is procurement ever considered a quasi-revenue stream? Seems like it functions as one and contracts aren't given out as a meritocracy.
- Are we talking about already public info to be re-bundled or dealing with confidentiality statutes and how that plays out with standards of national reporting? Companies could voluntarily provide that information but through this process it would be a concern about the veracity of the information.
- DOI Response: Regarding state and tribal, we will be making a presentation at their May meeting (State and Tribal Royalty Audit Committee). This process is about generating information to then make the right decisions related to setting up the MSG.
- DOI Response: some of these questions need to be considered by the multi-stakeholder group; some consensus will have to be reached on how to achieve transparency but streamlined so it's not creating additional steps and processes. By design, the international standard recognizes that there is a range of governance in each of the countries; can fit it in to existing laws and standards but will likely need additional legislative action to get this done. The government becomes a stakeholder in this process. They have to give an annual report to stay compliant – minimum standard; but can go beyond that. Regarding existing data, a lot of it is in the public domain. Depending on the stakeholders at the table they may decide to expand that; through the process we will learn what makes the most sense to the public and industry. The validator that validates the process to make sure it meets the standard comes from a list that is approved by the board. The MSG will select the reconciler.
- Will reporting be used to compare to tax exemption?
- DOI response: ONRR manages non tax revenue; tax revenue is something that can be considered by the multi-stakeholder group; in terms of taxes at a company/individual level, there may be confidentiality concerns.

HOUSTON – MARCH 28, 2012

- Having a hard time understanding what EITI is. If EITI is talking about what is being reported to the government and then reconciling the number, then the government is already doing that. What, then, is the purpose of EITI?
- DOI Response: While a lot of federal data is already being collected, the scope could expand from federal to state, tribal and could potentially include both public and private land. While a lot of the data is available, it is not as accessible and EITI provides the opportunity to receive input on how best to produce data and have accountability on data. The US is leading by example on this initiative as the only other developed country implementing EITI is Norway.
- Is there any point of reference to what Norway has implemented and at what level? What's out there currently?
- DOI Response: Norway is now a compliant country and it reports on revenues and taxes. Their EITI report is available online. The EITI website includes the reports from all EITI countries, as well as a video and other information explaining the EITI process. EITI

Norway is managed by a Norway EITI Secretariat that staffs the MSG. A lot of countries are different from the US because their resources are state owned and the data is more easily available. Similar to the US, the data in Norway was already available.

- How will EITI change existing reporting processes? Are we going to send one report to government and one to EITI? Or is that still to be determined by MSG?
- DOI Response: This will be determined by the MSG. The idea is for the MSG to be a collaborative body. One of the tasks of the MSG is to create the workplan and a reporting template.
- Will the MSG be voluntary? If so, where would the funding come from for those that can't afford it?
- DOI Response: The Government will have to be responsible for a lot of these duties but the process is very flexible.
- Exxon has been involved in EITI in different countries. Per diem is often offered when MSG meets although typically industry does not accept it while CSOs do. [DOI] is right in that there are different models to approach this. Serving on the MSG is not typically a full time job. The MSG comes together and does its work and then goes home.
- DOI Response: ONRR will be part of the MSG because ONRR collects all the non-tax revenue data. ONRR will work with the MSG to ensure that the ONRR data is reported correctly.
- Is there a target number of participants for the MSG? The higher the number the less functional the MSG. Chevron will be looking to work through API (American Petroleum Institute) to provide representation. There may be companies that want to provide representation beyond industry groups.
- Understands the concept of revenues going to EITI and then being reconciled by the government. What about royalty owners who, when they look at their royalty check, it doesn't match up with what's posted on EITI? What about when there is federal ownership of a lease and a royalty owner owns a percentage of it?
- DOI Response: the MSG will determine what levels of the revenue streams will be considered in reporting. The report that the MSG creates will explain the difference between the actual revenues that are collected and what is in the report. The Reconciler, for example in Norway this is Deloitte, this company will be responsible for figuring out the error that needs to be reconciled. This explanation will also be in the report.
- We really do not know how to do EITI in such a complex developed country as the US. EITI was primarily intended for developing countries where it forced a dialogue amongst sectors to reduce tensions and to develop transparency. Here there were often reports at aggregate levels that only showed 'total level of oil and gas' and were not disaggregated to individual companies. The biggest benefit in the US where we've had Occupy Wall Street and have trust issues among sectors will be a dialogue around transparency in a constructive way, while disclosure itself may not be a big deal. The argument of "why should we do it if the US isn't doing it" -- US signing on strengthens how other countries view EITI.
- The key Criteria for MSG members should be people who are recognized, respected and credible people in industry or whatever sector. These would be people who have

experience and are respected for that experience and have also participated in other types of collaborative projects before. For example with API, it is a respected organization. Don't make the stakeholder group too large because it would be too difficult to manage, especially if you have representatives that are already plugged into industry organizations and are familiar with vetting and gaining consensus. The question of how large to create the MSG is a hard one. Many of us have worked in teams in our companies and a good size would be seven to nine people, especially if you're looking for a highly functional group that can do things efficiently and quickly. Larger is difficult to manage and to schedule times to reach agreements. Some trade associations are connected to others and some of the members are the same. You can rely on those relationships to further represent a broader group (e.g. API and COPAS (Council of Petroleum Accountants Societies)). This may be something to pass on to the MSG as one of our concerns about a process that is administratively burdensome. Balance level of detail needed to provide more information in a way that is different from the current accounting system. Reporting things a little differently to a different source and spending time trying to resolve reconciliation differences. Finding a process that is similar to other reporting requirements would help lessen burden on companies.

WASHINGTON, DC – MARCH 29, 2012

- I commend you for taking this on. This is a hot button topic, lot of information, this is going to help bring up the conversation, at least on the revenues part. Give hard data to talk about and a forum for bringing together groups that are not really used to talking to each other. This is a big government, lots of areas of complexity – one of the issues that is important to address at the beginning is that the MSG should be a decision making body. Given our legal framework, can the MSG make decisions? Other issue we need to tackle quickly is getting the outreach system in place for civil society. EPA does this well. White House has Office of Public Engagement. Can we use existing structures in other agencies to support this process? Didn't get an email directly from Interior advertising public listening sessions.
- DOI Response: We have emailed all payers; state and tribal contracts; any suggestions you can send us about how we can get the word out. Do everything you can in your organizations to get the word out. Let us know how you feel we can best reach out to smaller companies. We are working with COPAS which gets us to different companies. Reaching out to state governors. Public comment is open until April 9. All comments we receive whether in person or in writing are all open and valid. Our facilitators are doing extensive outreach.
- EITI revenues generated on government land – do they deal with private and state lands?
- DOI Response: the very intent of the MSG is that it will be a decision making body with a consensus based approach. A big piece of this is that three sectors come together and the value of relationships that are built is really important. Everybody has voice at the table and doing this in a collaborative way. Participatory government is very exciting for us. Something the US can model to the rest of the world. We really are eager that even

as complex as our society/country is we can do it so other countries can. Another role DOI has is that we have obligations to tribes as the federal government. We have issued Dear Tribal Leader letters and are continuing to discuss tribal outreach and consultation.

- Outreach is needed for smaller folks on the industry side so they are informed about what is going on. They may not have had access to the info on the Federal Register notices.
- We assist countries in implementing EITI and are a member of the Publish What You Pay coalition. We were instrumental in passing 1504 of Dodd-Frank, broken out by payment stream and on a project basis. Is the minimum level of reporting already determined? Seems you wouldn't want a different level of reporting as required by 1504 than EITI. Interested in hearing how 1504 might foreclose or dictate certain options before the MSG is established.
- DOI Response: We can't prejudge what the MSG says needs to be reported – really wouldn't say we have a particular position
- ONE campaign is interested in better-targeted development assistance, also interested in increased transparency in developing countries. In implementing USEITI, we are not in vacuum. US global leadership position is being considered. Certain disclosure processes in US are pretty robust. Each MSG determines what is disclosed and how much, we just want to be sure that as this new MSG is given the decision making authority, and that it not be a forum that could roll back progressive standards the US already has because the whole world is watching.
- Is this a process over time where the level of disclosure can increase/decrease over time as needed? Any efforts to reach out to State Lands Commissions? Audit groups are not the same as those involved with managing state lands and it could be a problem if they're not represented at the table.
- DOI Response: the work plan is a living document. Around the world, the work plan has been phased, all at once, etc. A critical part of EITI is that it continues to learn from itself as you go through the process.
- Can you talk about the limitations of the FACA process in allowing the MSG to be not just an advisory group but a decision making group? Critical to this initiative is that the group have some kind of force/weight. Is there legal analysis still to be done to make this happen? If MSG makes decisions that don't stick, that will be a problem.
- Is it the point of view of DOI that it would be a legitimate outcome of this process as decided by the MSG to have companies report less under EITI than what Dodd-Frank requires (e.g. if EITI isn't required to report at project level)?
- Will additional legislation be needed as a result of what the MSG decides for USEITI?
- Will DOI do legal research on legal and regulatory practices? MSG can know the zone of flexibility in which they can make decisions and require new regulation. If they don't know that up front they will be delayed when they start. Seems that research should start now. Any funds appropriated for work of the MSG or will congressional appropriation be needed? In many countries that are less resource endowed than US, there are donors to fund. This will not be case in US, so how is money going to work in functioning of the MSG?

- Perhaps the U.S. shouldn't have only one MSG but several depending on the regions. The Gulf is different from Alaska.
- Getting this right is crucial: DOI is on a deadline. Secretary Salazar is going to meetings right after public comment period ends and will be eager to announce progress. It's important to make sure that certain things are worked out. New set of rules at the international level are quite strict about participation from civil society. That doesn't bode well. We are concerned there is no listening session in the Gulf. We want people looking at the numbers and types of folks coming to listening sessions and thinking that the right work was done to set this up. Explore whether there should be regional MSGs and tailored is something that should be explored. Your point on scope is really important: federal versus not is important for figuring out who will sit on the MSG and what resources and time should be spent working on the MSG. What are some potential options for recruiting people for the MSG?
- DOI Response: What do you think is best?
- We believe that self-selection is best, but given the diversity of stakeholders and regions that's difficult. How do you make sure this group is representative of the diversity of stakeholders?
- Given that we look at the MSG as 3-way axis of government, industry, and civil society, we wouldn't want the civil society portion to become the default if you're not sure how a stakeholder fits in (i.e. not sure where this person goes so put them in civil society). It's important that data that's agreed upon is comparable across regions.
- DOI Response: which comes first – do you define scope up front, start at federal and add as you go?
- EITI rules give some guidance about this. Other countries have been criticized for not including certain companies up front. For example, if we go with federal because of size of payments then we're missing the boat.
- DOI Response: What are the sectors?
- It's important for the group to include civil society representatives who are from areas of the country that have been impacted by production. Gulf coast, Alaska.
- Companies and trade associations – small, medium, and large – should be included.
- You're seeing blank faces [about the question of balance in the MSG] because you haven't given us any options yet. Show this is how countries have done it – here is what you could do. Some EITI MSGs had twenty-something but aren't even close in size to our extractive sectors. But assume from our industry colleagues that it's a couple of trade associations. There are questions of representation in each constituency, but we first need a few examples of what the options are and how we can react.
- From the oil/gas perspective, given large numbers of companies involved it will be important to have association representatives who can speak on behalf of their people. Also, I encourage you to have selected companies who have sat on other EITI MSGs so they can bring their experience to the process. Would rather you err on side of efficiency rather than full representation so the process is not dragged out.
- Show examples of US processes.
- My experience [with the federal multi-stakeholder process] hasn't been always amicable. My experience as a member of the Royalty Policy Committee is that it's hard

to get industry and tribes and states to agree on issues. Maybe some issues have agreement, entrenched opinions on others. That's a group that makes recommendations to DOI. Always tries to reach unanimity rather than writing majority/minority reports.

- There is a privilege that can evolve from internationally focused entities that have experience and can give unfair advantage over tribal government colleagues who don't operate overseas. Would want to make sure that it's not a scenario where we're having the same conversations we're struggling with in other countries here because it could push out more local organizations.
- Consider doing a pilot EITI such as Australia
- DOI Response: How should the government be represented?
- Have a GAO (U.S. Government Accountability Office) rep or IG (Inspector General) rep from DOI – reps that have technical understanding but aren't invested in the way that DOI is. In some countries members of parliament are on a working group. It's not practical for someone from the House to be on a working group. But how does DOI monitor its own work, not just those involved in valuing resources and issuing licenses but those who are making sure revenue is received.
- Having the right group of people represent the US government will be crucial.
- On the federal level we would encourage SEC's (U.S. Securities and Exchange Commission) division of corporate finance be on to make sure it's compatible with any final 1504 rulemaking.
- DOI Response: If you have comments about outreach please let us know.
- Post the Power Point online and do a voiceover.
- Continue to use your process of sending emails to your 2000 payers to reach out.

IV. Comment Cards Submitted by City

WASHINGTON, DC

- Very helpful session. Thank you for being so welcoming and open. Look forward to future interactions & a great successful process implementing USEITI.
- [Reach out to] Western States Lands Commissioners Association; Eastern States Lands Commissioners Association; David Harrison – Council of Energy Resources Tribes; Friends of the Earth; POGO (Project on Government Oversight).

Appendix A: List of Public Listening Session Attendees

USEITI Public Listening Session – St. Louis, MO, March 19, 2012

First Name	Last Name	Affiliation
Wanda	Burget	Peabody Energy
Mike	Jasutis	Peabody Energy

USEITI Public Listening Session - Denver, CO, March 21, 2012

First Name	Last Name	Affiliation
Matt	Good	Kodiak
Nicole	Healy	Venoco
Leanna	Howell	Council of Petroleum Accountants Societies
Kathy	Koch	Pioneer
Tierney	Loberg	Encana
Mike	Matthews	Wyoming DOA
David	Riverc	Freeport-McMoRan
Maureen	Upton	Resource Initiatives
Kendra	Wallis	Kodiak

USEITI Public Listening Session - Houston, TX, March 28, 2012

First Name	Last Name	Affiliation
Brooke	Brown	Southwestern Energy
Norma	Gonzalez	Repsol
Martin	Harriman	Chevron
John	Harrington	Exxon Mobil
Eloy	Martinez	Southwestern Energy
John	Olivo	Chevron
Gabriela	Prieto-Borges	Repsol
Carmen	Zaragoza	Southwestern Energy

USEITI Public Listening Session - Washington, DC

March 29, 2012

First Name	Last Name	Affiliation
Maryamu	Aminu	ONE
Nancy	Bryson	Holland and Hart
Curtis	Carlson	U.S. Department of Treasury
Lisa	Ellman	U.S. Office of Management and Budget
Marti	Flaks	U.S. Department of State
Steve	Gallooly	U.S. Department of State
Ian	Gary	Oxfam
		Independent Petroleum Association
Susan	Ginsberg	of America
Hilda	Harnack	World Bank
Lee	Helfrich	Lobel Novins & Lamont
Nils	Johnson	Holland and Hart
Emily	Kennedy	American Petroleum Institute
Isabel	Munilla	Publish What You Pay US
Walt	Retzsch	American Petroleum Institute
Justin	Spickard	American Petroleum Institute

Appendix B: EITI Presentation



U.S. Department of the Interior

U.S. Extractive Industries Transparency Initiative (USEITI)

Public Listening Sessions
on the Formation of the U.S.
Multi-Stakeholder Group

1



Extractive Industries Transparency Initiative U.S. Department of the Interior

Public Listening Session Agenda

- 1:00 Welcome
- 1:05 DOI EITI Presentation
- 1:20 Comment Period Begins
- 3:00 Comment Period Ends



What is EITI?



INDUSTRY
discloses
payments



EITI REPORT
payments are
independently
reconciled and verified

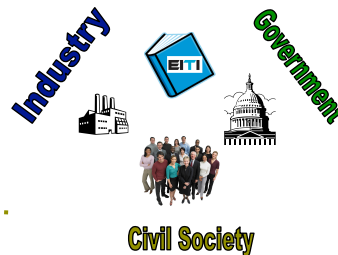


GOVERNMENT
discloses receipt of
payments

- British Prime Minister Tony Blair launched EITI in 2002
- Thirty-five countries are in various stages of implementing EITI

MSG

- EITI has two main elements:
 - industry publishes what they pay and the government publishes what they receive
 - the process is overseen by a multi-stakeholder group (MSG) made up of government, industry and civil society representatives



What has taken place so far?

- September 20, 2011 – President Obama announced the US intention to implement EITI as a signature initiative under the US Open Government Partnership
- October 25, 2011 – President Obama announced that the Secretary of the Interior Ken Salazar would lead the U.S. effort to implement EITI
- October 25, 2011 – Secretary Salazar committed to working with civil society, industry, and the American public to implement EITI
- February 24, 2012 – DOI issued a Federal Register Notice requesting comment on the formation of the multi-stakeholder group (MSG) and the US implementation of EITI

Completes the first 3 EITI candidacy requirements

In order to apply for EITI Candidacy:

SIGN-UP REQUIREMENTS

- The government is required to issue an unequivocal public statement of its intention to implement the EITI.
- The government is required to commit to work with civil society and companies on the implementation of the EITI.
- The government is required to appoint a senior individual to lead on the implementation of the EITI.
- The government is required to establish a multi-stakeholder group to oversee the implementation of the EITI.
- The multi-stakeholder group, in consultation with key EITI stakeholders, should agree and publish a fully costed work plan, containing measurable targets, and a timetable for implementation and incorporating an assessment of capacity constraints.

4



U.S. Extractive Industries

- International Rankings ¹
 - U.S. is ranked #1 for natural gas production
 - U.S. is ranked #2 for coal production
 - U.S. is ranked #3 for oil production
- Production from Federal Lands ²
 - 42% of coal
 - 31% of oil
 - 25% of natural gas
- Value added by Extractive Sector is 1.9% of GDP ³

1/ Source: CIA World Fact Book

2/ Source: DOI, New Energy Frontier Report, May 2011

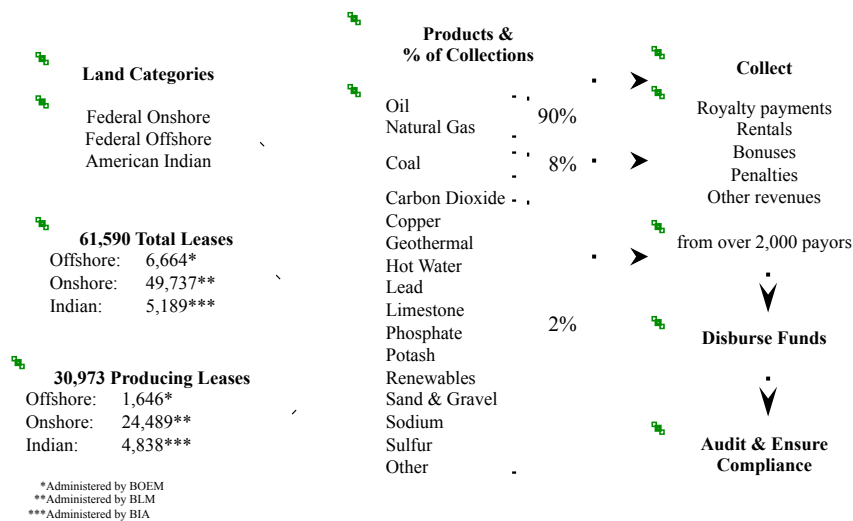
3/ Source: BEA, Annual Industry Accounts, May 2011

5



What revenues does ONRR manage?

(FY 2011 Data)



In FY 2011, ONRR Disbursed \$11.16 Billion



What are the benefits of USEITI?

Transparency & Dissemination



Enhanced Understanding
by all Stakeholders



Better Governance & Accountability

Access to
Data and
Information

Informed
Public
Dialogue

Contributes
to Fair
Return for
the Use of
Public
Resources

Quantifies Industry
Contributions to the
Government

U.S. Global Leadership in:

- Collaborative Decision Making
- Participatory Governance
- Transparency & Accountability



What is the role of the MSG?

- The Multi-Stakeholder Group (MSG):
 - Is comprised of government, industry and civil society representatives
 - Works collaboratively to decide how USEITI will be implemented
 - Develops the USEITI work plan and application for EITI Candidacy
 - Designs and implements the USEITI framework to achieve EITI compliance



What are the next steps?

- Continue outreach with industry, civil society, and the public to foster relationships and seek input on formation of the Multi-Stakeholder Group (MSG)
 - Public Comment Period Closes – April 9, 2012
 - Public Listening Session Materials Published – April 2012
(via www.doi.gov/eiti)
 - Assessment Report Published – May 2012
(via www.doi.gov/eiti)
- MSG Established – TBD
- MSG Develops the USEITI Work Plan – TBD
- MSG Applies for USEITI Candidacy – TBD
- International EITI Board Approves U.S. Candidacy – TBD
- MSG Designs and Implements the USEITI Framework – TBD
- MSG Publishes the First USEITI Report – TBD
- MSG Seeks Validation & Compliance – TBD

9



Key Questions for USEITI Stakeholders

- The EITI requires a multi-stakeholder group to be formed to oversee implementation. Who are the key sectors or stakeholders that need to be involved in the multi-stakeholder group?
- How best can a balance of interests and perspectives, be achieved in the formation of the multi-stakeholder group?
- In your opinion, what are the key attributes of both a successful and high functioning multi-stakeholder group and the successful implementation of USEITI?
- What key concerns, if any, do you have about implementing the USEITI process?

10



Public Comment Information

- Comment Period Closes April 9th
- Submit Comments:
 - On the USEITI web page: www.doi.gov/EITI
 - Via email: EITI@ios.doi.gov
 - By mail to: EITI Comments; c/o U.S. Department of the Interior; 1801 Pennsylvania Avenue NW – Suite 400; Washington, DC 20006
 - At the public listening sessions:
 - March 19th – St. Louis, Missouri
 - March 21st – Denver, Colorado
 - March 28th – Houston, Texas
 - March 29th – Washington, DC

Appendix C: Written Public Comments sent to the U.S. Department of the Interior

- Michael J. Brown, Barrick Gold of North America
- Joyce Dillard, unaffiliated
- Hilda Harnack, World Bank
- Wade Hopper, Council of Petroleum Accountants Societies
- Kyle Isakower, American Petroleum Institute
- Karin Lissakers, Revenue Watch
- Isabel Munilla, Publish What You Pay United States
- Katie Sweeney, National Mining Association



Barrick Gold of North America, Inc.
136 East South Temple, Suite 1800
Salt Lake City, Utah 84111
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April 9, 2012

U.S. Department of the Interior
1801 Pennsylvania Ave, NW, Suite 400
Washington, DC 20006

Attention: Karen Senhadji, Senior Advisor to the Assistant Secretary for Policy, Management and Budget

Re: EITI Comments, Docket ONRR-2012-002

Dear Ms. Senhadji:

These comments are being submitted by Barrick North America (“Barrick”) in response to the DOI Notice Seeking Comment on U.S. Implementation of the Extractive Industries Transparency Initiative (“EITI”). 77 Fed. Reg. 11151 (February 24, 2012). Barrick operates six producing mines in the United States – Goldstrike, Bald Mountain, Cortez, Turquoise Ridge, Golden Sunlight and Ruby Hill – and has ownership interests in two others, as well as development projects and exploration activities in Nevada, Alaska and other States. Barrick appreciates the opportunity to comment on this important initiative.

Barrick is the U.S. operating division of Barrick Gold Corporation (“Barrick Gold”). Barrick Gold, a Canadian corporation, is the world’s largest gold producer and gold industry leader, with 25 operating mines and a pipeline of projects located across five continents. Barrick Gold joined the Extractive Industries Transparency Initiative (EITI) in 2006, the first Canadian mining company to do so. The company supports the overarching goals of the EITI and endorse its 12 principles, which form the cornerstone of the initiative and demonstrate a commitment to anti-corruption and ethical business practices. Barrick Gold discloses its taxes, royalties and other payments to governments on its website and in this report. Barrick Gold complies in all material respects with its EITI-related obligations.

As an EITI signatory, Barrick Gold contributes to an improved business environment and reduced political risk in countries where it operates. EITI country-level validation is a multi-year, multi-stakeholder process and, through active participation in the process, Barrick Gold constructively engages with other stakeholders in civil society and government who are also committed to anti-corruption.

Barrick Gold supports implementation of EITI in the countries where we operate. The company has operations in one country which is EITI compliant; Peru, designated fully compliant in February 2012. Barrick Gold was actively involved in the validation process in Peru and promoted this initiative among other mining companies and stakeholders. Peru is the first country in Latin America to obtain this designation. Barrick Gold also has operations in two EITI candidate countries; Zambia (candidate country since 2009) and Tanzania (candidate country since 2009). Barrick Gold has also filed comments with the U.S. Securities and Exchange Commission supporting implementation of EITI in the U.S. as incorporated in the Dodd-Frank Wall-Street Reform and Consumer Protection Act.¹

As described in the Federal Register notice, DOI seeks comment on (1) the composition, balance and key attributes for success on formation of the multi-stakeholder group (“the MSG”) to oversee implementation of EITI in the U.S. and (2) key concerns, if any, regarding EITI implementation in the U.S. Barrick’s comments, as set forth in detail below, can be summarized as follows:

- Consistent with the EITI principle that national implementation must be consistent with national law, the MSG must be convened and operated in compliance with the requirements of the Federal Advisory Committee Act (“FACA”), 5 U.S.C. App. II;
- A key aspect of the charge to the MSG in development of the EITI work plan should be review of disclosures made under current U.S. law, and evaluation of the extent to which the EITI transparency standards are already being met;
- To the extent that is not the case, any additional laws or regulations adopted must be drafted in a way that reflects the practical issues associated with implementation, does not create confusion in the marketplace or unnecessary and costly duplication of efforts, and minimizes the potential unintended consequences of such laws and regulations.

I. THE MSG MUST BE CONVENED AND OPERATED UNDER THE FACA

A. Requirements of the FACA

The FACA, as enacted in 1972, is designed “to control the advisory committee process and to open to public scrutiny the manner in which government agencies obtain advice from private individuals.” *Nat’l Anti-Hunger Coalition v. Executive Comm. of the President’s Private Sector Survey on Cost control*, 711 F.2d 1071, 1072 (D.C.Cir, 1983), quoting *Food Chem. News v. Davis*, 378 F. Supp. 1048, 1051 (D.C. 1974). It establishes procedural requirements for the creation, membership, operation and reports of all advisory committees that are either established or utilized by a federal agency. 5 U.S.C. App. II § 3(2); 41 C.F.R 102-3.25, 102-3.40(d), 102-3.40(f). An advisory committee is defined as

¹ <http://www.sec.gov/comments/s7-42-10/s74210.shtml> (as visited on April 2, 2012).

Any committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup thereof, which is established or utilized . . . by one or more agencies in the interest of obtaining advice or recommendations for the President or one or more agencies or officers of the Federal Government.

FACA Section 3(2).

The procedural requirements of the FACA are well established. They include the following:

- All federal agencies must comply with the FACA;
- Membership must be fairly balanced in terms of points of view represented and the functions to be performed;
- The advice and recommendations of the committee must be the result of its independent judgment;
- Before an advisory committee meets or takes any action, a charter must be filed with the head of the agency to whom the advisory committee reports, as well as the standing committees of the Senate and of the House of Representatives having legislative jurisdiction over such agency, and furnished to the Library of Congress;
- The charter must describe the committee's objectives and the scope of its activities; the period of time necessary for it to carry out its purpose; the agency responsible for providing necessary support for the committee; and a description of the duties for which the committee is responsible;
- Notice of all meetings of the committee must be published in the Federal Register 15 days prior to the meeting;
- Each meeting of the committee must be open to the public;
- All materials considered by the committee must be available for public inspection and copying; and
- Unless otherwise authorized by law, the advisory committee shall be utilized solely for advisory functions.²

B. Applicability to the EITI Workgroup

The purpose of the DOI notice and request for comment is to complete the two remaining steps in the process of finalizing the U.S. application for EITI Candidacy. These steps are described by DOI on its EITI website as follows:

² FACA Sections 5 – 10.

- The government is required to establish a multi-stakeholder group to oversee the implementation of the EITI; and
- The MSG, in consultation with key EITI stakeholders, should agree and publish a fully costed work plan, containing measurable targets, and a timetable for implementation and incorporating an assessment of capacity constraints.³

President Obama has appointed Secretary Salazar as the senior individual in the Executive Branch to lead the implementation of EITI in the U.S. Secretary Salazar has delegated authority for implementation to the DOI Office of Natural Resource Revenues (“ONRR”). Secretary Salazar is an officer of the Federal Government and DOI and ONRR are agencies within the meaning of the FACA. The function of the MSG is to advise Secretary Salazar and DOI/ONRR on implementation of the EITI. Accordingly, the MSG is an advisory committee that is to be established or utilized by a government agency for advice and recommendations and must be convened in compliance with FACA requirements.

Accordingly, DOI must create and file a charter for the MSG FACA, it must provide notice in the Federal Register of the creation of the committee, it must ensure that membership is balanced, and it must ensure that all meetings and documents reviewed and/or developed are open and available to the public.

C. The Balanced Membership Requirement

The DOI, like other federal agencies, will typically implement the balanced membership requirement of the FACA by providing Federal Register notice of the committee charter and solicitation of nominations from the public. An agency must ensure that “in the selection of members for the advisory committee, the agency will consider a cross-section of those directly affected, interested, and qualified, as appropriate to the nature and functions of the advisory committee. Advisory committees requiring technical expertise should include persons with demonstrated professional or personal qualifications and experience relevant to the functions and tasks to be performed.” 41 CFR 102-3.60(b)(3).

The EITI Rules present a somewhat unusual situation in that they provide that the selection of representatives to the MSG is to be made by the group itself. “Each stakeholder group should have the right to appoint their own representatives, bearing in mind the desirability of pluralistic and diverse representation.” EITI 2007 Rules at 16. While DOI can certainly request that stakeholder groups take this element of the EITI Rules into consideration in presenting their nominations for the MSG FACA, the purpose of the balanced membership requirement is to prevent undue influence on agency decision-making by special interest groups, see H.R. Rep. No. 1017, at 6. The preventive remedy prescribed by Congress is an open selection process. One of the key stakeholders in the EITI process is “civil society.” As that term lacks an analogue in the U.S., the FACA nomination process will provide DOI with the requisite public input for FACA formation.

³ <http://www.doi.gov/EITI> EITI Factsheet 01(as visited on April 2, 2012).

II. THE MSG WORKPLAN DEVELOPMENT CHARGE SHOULD INCLUDE EVALUATION OF WHETHER EXISTING US DISCLOSURE REQUIREMENTS MEET EITI DISCLOSURE REQUIREMENTS

As described on the EITI Factsheet, EITI has two main elements: companies publish what they pay and governments publish what they receive; and the process is overseen by a multi-stakeholder group of government, companies and civil society. Once established by the government, the MSG develops a work plan for implementation of EITI, including identification of legal, regulatory or other obstacles to implementation that the government is then required to remove.⁴ The 2011 EITI Rules provide that “There is no one way of dealing with this issue – countries will have various legal frameworks and other agreements that may affect implementation and will have to respond to these in different ways.” (EITI 2007 rules at 20).

Unlike the great majority of countries in which there is no established law relating to public disclosure of payments by extractive industries and receipts by the government, the U.S. is starting from a very different point. The U.S. already has a highly developed and regulated disclosure system that operates pursuant to law and Congressional oversight. The extent of these disclosures, the financial requirements that apply to them and public accessibility do not seem to be well understood by the various MSG stakeholders. Thus, a comprehensive review of these laws and existing reporting by the MSG will be required to determine whether the EITI disclosure and oversight criteria are already being met under these existing U.S. law, and if so, how to present that case to the EITI Secretariat.

A. DOI Payment Disclosure Authority

For example, a number of laws delegate authority to DOI to manage extractive industry activity on federal lands, including the regulation, implementation and public reporting of payments to the government.⁵ Statistical reports on the ONRR website make this information, which is audited pursuant to U.S. government accounting standards, available to the public in aggregate form. The extent to which DOI discloses company specific information is controlled by the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552. The purpose of FOIA is to make information provided to the government available to the public to increase transparency and public accountability. That goal is balanced within the law itself against the interests of the information submitter through incorporation of a series of exemptions that protect certain information against release. For example, confidential commercial and financial information and trade secrets are exempt from disclosure. In the event of disagreement over application of the exemption, judicial review to resolve the dispute is available. *Chrysler v. Brown*, 441 U.S. 281 (1979).

B. SEC Dodd-Frank Disclosure Requirements

⁴ EITI Requirement 8, EITI Rules, 2011 Edition at p. 20.

⁵ These include *inter alia* The General Mining Law of 1872, as amended; those portions of the Federal Land Policy and Management Act of 1976, as amended (FLPMA) that affect the General Mining Law; and the Surface Resources Act of 1955 as described at <http://www.blm.gov>; and The Mineral Leasing Act of 1920, 30 U.S.C. 1923, the Outer Continental Shelf Lands Act of 1953, 43 U.S.C. 1353, the Federal Oil & Gas Royalty Management Act of 1982 and other laws listed in full on the ONRR website. www.onrr.doi.gov

With respect to corporate disclosures, The Dodd-Frank Wall Street Reform and Consumer Protection Act (“the Act”) mandates disclosure of payments “made to further the commercial development of oil, natural gas, or minerals” by companies “engaged in the commercial development of oil, natural gas, or minerals” who are required to file an annual report with the Securities and Exchange Commission (“SEC”). 15 U.S.C. 78m(q). This provision applies to “90 percent of the major internationally operating oil companies and 8 out of 10 largest mining companies in the world.” 75 Fed. Reg. 80980 and n. 39.

The term “payments” is defined by statute to include

taxes, royalties, fees (including license fees), production entitlements, bonuses and other material benefits, that the Commission, *consistent with the guidelines of the Extractive Industries Transparency Initiative (to the extent practicable)* determines are part of the commonly recognized revenue stream for the commercial development of oil, natural gas, or minerals (emphasis supplied).

The law directs the SEC to issue final regulations for the inclusion of information relating to any such payments to a foreign government or the Federal government. 15 U.S.C. 78m(q)(2). The law further provides that

(E) *International transparency efforts. To the extent practicable, the rules issued under subparagraph (A) shall support the commitment of the Federal Government to international transparency promotion efforts relating to the commercial development of oil, natural gas, or minerals* (emphasis supplied).

The law further requires that payment information be provided in interactive electronic form for ease of aggregation. 15 U.S.C. 78m(q)(1)(C) and (D).

The SEC published proposed rules to implement these provisions of law on Dec. 23, 2010 in compliance with the substantive provisions of the amended Securities and Exchange Act and the procedural requirements of Administrative Procedure Act, the Paperwork Reduction Act, the Regulatory Flexibility Act, and the Small Business Regulatory Enforcement Fairness Act. 75 Fed. Reg. 80978. The rules identify and request comment on 86 specific implementation questions as well as any other aspects of the rule. Comments by all interested stakeholders, including government, extractive industries, and civil society have been filed and are available on the SEC website for review. The final regulations adopted by the Securities and Exchange Commission must be based on this administrative record and will be subject to judicial review in the U.S. court system for compliance with U.S. law.

Given this context, the MSG charter required by FACA should require review by the committee of existing U.S. mandated disclosures and determination of whether those disclosures meet the flexible EITI standard for national law implementation.

III. US EITI PARTICIPATION SHOULD AVOID DUPLICATION, INCONSISTENCY AND REDUNDANCY

The key issues for Barrick in the U.S. implementation of EITI are (1) the importance of ensuring that it does not duplicate or confuse reporting that is already required in the U.S.; and (2) consistency with U.S. law. The key focus of the U.S. EITI implementation should be to provide transparent disclosures consistent with EITI as available under and consistent with U.S. law.

For example, virtually all of the substantive features of the work plan to be developed by the MSG in the voluntary EITI process – types of payments to be reported, reporting template, etc. – are currently the subject of the SEC rulemaking. Those requirements, when issued will be enforceable U.S. law for 90% of the mining industry. There is no rational basis for the development of a different set of voluntary reporting requirements or template.

Moreover, as Barrick Gold's SEC comments illustrate, one of the issues in the SEC proceeding is whether the statutory reporting requirements accurately capture the full range of material benefits to society from mining activity. The legislative language requires disclosure of taxes, royalties, fees, production entitlements, bonuses *and other material benefits*. Barrick Gold's position is that this definition must be interpreted as exceeding EITI requirements in order to provide a complete picture of such benefits.

Barrick Gold has recommended inclusion of infrastructure investment that will benefit the host jurisdiction, social and community payments, employer paid social security and similar benefits, and a broader range of tax payments. SEC Comment at pp. 14 and 15. Once the SEC rulemaking is finalized, those are the disclosure reporting requirements that will be enforceable in the United States and those are the requirements that should be deemed compliant with EITI. Redundancy and different forms of information reporting are inefficient for the government, industry and civil society and should be avoided.

Barrick appreciates the opportunity to submit these comments and looks forward to working with DOI and the MSG FACA committee.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "M. J. Brown", with a long horizontal flourish extending to the right.

Michael J. Brown

Vice President, Corporate & External Affairs

Comments to Docket No. ONRR-2012-002 due 4.9.2012

We are concerning that the public needs to be represented in areas of Water including but not limited to Water Supply and Water Quality, Air Quality including but not limited to Particulate Matter and Ozone, and all Public Health issues that may be related.

The long-term approach and regional analysis should be addressed, not just a national or international approach.

Public Health and Safety is designated to the States for execution.

Joyce Dillard
P.O. Box 31377
Los Angeles, CA 90031

Comments Regarding the United States Extractive Industries Transparency Initiative

- The EITI requires a multi-stakeholder group to be formed to oversee implementation. Who are the key sectors or stakeholders that need to be involved in the multi-stakeholder group?

Opinion: There should not be just one multistakeholder group, but a central one plus several regional MSGs, depending on the areas of extractive industry activity, e.g., Gulf states, Alaska, Mid-West.

- How best can a balance of interests and perspectives be achieved in the formation of the MSG?

Opinion: By ensuring that the representatives from each party (Government, civil society and companies) are elected from as a result of a broad consultative process.

- What are the key attributes of both a successful and high functioning multi-stakeholder group?

Opinion:

A. Commitment from Government, Civil Society Organizations and Companies

- Consistent, dedicated and high-level leadership (well-positioned EITI champion to resolve deadlocks and to acquire resources)
- Giving legislative / regulatory backing to EITI implementation
- Active civil society participation (involving capacity building)
- Government and companies aiming at an extensive high quality publication of data
- EITI as part of a broader reform in extractive industries sector

B. Commitment to a time-frame

- Quick allocation of government capacity (human and financial)
- Quick capacity building among all stakeholders
- Regional knowledge sharing
- Regular progress reviews
- Broad communication program

- What key concerns, if any, do you have about implementing the USEITI process?

Opinion: The ability to organize various regional EITI Initiatives due to the complexity of the sectors and size of the U.S.

Hilda Harnack
Tel. 703 893 5506

April 2, 2012

EITI Comments
c/o U.S. Department of the Interior
1801 Pennsylvania Ave. NW.
Suite 400
Washington, DC 20006

COMMENT ON THE EXTRACTIVE INDUSTRIES TRANSPARENCY INITIATIVE (EITI)

The Council of Petroleum Accountants Societies (COPAS) appreciates the opportunity to comment on the EITI published in the Federal Register on February 24, 2012 (pages 11151-11152). COPAS has been in existence for over 50 years and our members have extensive experience with the reporting of royalties, rentals, bonuses and taxes to various agencies for the extraction of oil and gas. Therefore, we submit our comments to the Department of Interior to aid in the establishment and convening of a multi-stakeholder group (MSG) in order to implement EITI.

First, because of our experience with the reporting of royalties, lease rentals, bonuses and taxes, COPAS should be included in the EITI multi-stakeholder group.

Secondly, a COPAS representative was interviewed by the Consensus Building Institute (CBI) on March 20, 2012. As was emphasized in the interview, the MSG should ensure that whatever is ultimately required to be reported, that there be little or no duplicative reporting. Additionally, the reporting should be at as high a level as possible to minimize the burden associated with the reporting.

COPAS appreciates the opportunity to provide comments to this Federal Register on the EITI. If you have any questions regarding our comments, please contact me at (713) 732-6404.

Sincerely,

Wade Hopper

Wade Hopper
COPAS Revenue Committee Chairperson



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April 6, 2012

Amy Holley
Acting Assistant Secretary
Policy, Management and Budget
U.S. Department of Interior
1849 C Street NW.
Washington, DC 20240

Dear Ms. Holley,

Pursuant to your Notice Seeking Comment on the Extractive Industries Transparency Initiative (ONRR-2012-002), API appreciates the opportunity to provide the Department of Interior (DOI) with comments and suggestions regarding the formation of a multi-stakeholder group (MSG) to plan and implement US membership in the Extractive Industries Transparency Initiative (USEITI). Our contribution to this process will be based on significant experience gained by API members in the implementation of the EITI process in many other countries. API member companies have been engaged in EITI since its inception and several members currently continue serving on the EITI board. API has been an open advocate of EITI, as it is the most effective framework to promote transparency. We believe EITI is a good process because it brings all stakeholders to the table to collaboratively develop a government revenue reporting system which is ultimately verified by an independent third party. Since all interested parties are part of the process and the program applies to all extractive participants, mutual goals are achieved and impacts mitigated.

Below please find some comments and suggestions to your questions:

I. The EITI requires a multi-stakeholder group to be formed to oversee implementation. Who are the key sectors or stakeholders that need to be involved in the multi-stakeholder group?

It has been the experience of our members that creating a cohesive MSG is essential to effective implementation of any EITI program, which is based on consensus decisions made by

all parties engaged. We believe that the development of a USEITI program would be no exception. Due to the sheer number of potential stakeholders involved, however, USEITI implementation will be unlike any other EITI implementation to date. A key objective therefore would be to ensure a balanced multi-stakeholder representation that is also workable in size.

It is also important in this process that all members of the MSG are empowered by their constituencies. This has worked successfully where groups establish an internal formal decision-making process, providing assurance to the MSG that members' views are fully representative.

Government representation should include knowledgeable officials that are engaged and experienced in payments and revenues processes associated to the extractive industry. Government revenue transparency to the American public is the ultimate objective of the USEITI process, therefore government MSG representatives, besides being familiar with the current revenue reporting mandates and accounting procedures, should also be knowledgeable of any legal considerations on business and government disclosure of the various government revenue sources. API believes it would be logical to include officials from DOI's Office of Natural Resources Revenue (ONRR) and the Treasury Department, but also to include representatives from the Security Exchange Commission's (SEC) Division of Corporation Finance. SEC representation on the MSG would help to ensure USEITI is implemented in a manner that is compatible with emerging Dodd-Frank §1504 rules. It will also be desirable to avoid imposing redundant and inconsistent sets of reporting requirements for extractive industries from these two separate initiatives.

With respect to civil society representation on the MSG, its representatives must also be familiar with EITI and its revenue disclosure and reconciliation objectives. MSG participation needs to be restricted to U.S.-based organizations whose focus is limited to revenue transparency. Organizations with a central mission, non-germane to revenue transparency would likely make consensus difficult, if not impossible, to the detriment of all stakeholders.

With literally thousands of companies reporting payments to government, an adequate industry representation needs to also be ensured. We would suggest that, to achieve a manageable figure, the MSG include relevant trade associations representing companies from the major extractive industries: oil, gas, and mining. We also would suggest that DOI make membership available to some individual oil and gas producers and mining companies. We believe that the government should be open to including such participation and to strive to include a cross-section of large, medium and small companies, which can contribute with experience and context for different components of the extractive industries sectors.

II. How best can a balance, with regards to interest and perspectives, be achieved in the formation of the multi-stakeholder group?

In order to properly balance the varied interests of the prospective members of an MSG, DOI must first ensure the scope and objectives of USEITI are clearly defined, and that the groups represented are relevant to the subject, diverse, genuine and empowered.

III. In your opinion, what are the key attributes of both a successful multi-stakeholder group and the successful implementation of USEITI?

API believes the government must clearly articulate, from the beginning of the process, the objectives of USEITI so that the MSG can have focused and efficient engagement. Organizations, companies, or individuals not willing to endorse USEITI objectives up front should therefore not form part of this process. Once the MSG is established, a reasonable amount of time must be allotted to establish decision-making procedures, develop consensus around the country work plan, establish accounting parameters and to review the plan with industry representatives and government officials to ensure that it can be effectively implemented in a cost-effective and legally sound manner.

API looks forward to the formation of the MSG as it will provide a forum for open exchange and improved understanding amongst all of the government, industry and civil society members gathered for a common purpose. Development and implementation of EITI in the U.S. where the extractive industry sectors are so vast and complex, and doing so in a manner that is practical, efficient and effective, will depend on developing and maintaining a spirit of constructive engagement throughout the process.

IV. What key concerns, if any, do you have about implementing the USEITI process?

In addition to initiating the effort with clear objectives as stated above, we have some additional points we would like to highlight:

In our view, the focus of USEITI should not be different from the rest of EITI processes taking place elsewhere. That is, seek to establish a simple and efficient mechanism to capture relevant payments made by extractive companies to the government and reconcile those with the revenues from the same sources received by the government. Since the U.S. Government receives all production-specific tax, royalties, rents, and bonus payment information from industry in various ways, it is important that the DOI clearly identifies and share with the MSG in advance the sources and government registers of those payments in order to set USEITI objectives that are realistic and cost-effective. A simple report of aggregated payments of

extractive industries in a concise and efficient manner will certainly help the American public understand better the payments and revenues that originate from American extractive industries.

Additionally, in our view USEITI must be consistent with current reporting laws, Dodd-Frank § 1504, and other foreign reporting standards. Creating multiple revenue reporting regimes will place an undue burden on industry and increase costs to the government while undermining the value of USEITI. Also, to simplify the USEITI process, we would support limiting the USEITI to extractive operations on federal lands and excluding operations on private and state lands.

We appreciate the opportunity to provide some initial comments regarding the USEITI initiative and creation of the MSG. As mentioned, we believe we are in a good position to contribute with our members' experiences in this process. Our membership consists of over 500 corporate members. We are the only national trade association that represents all aspects of America's oil and natural gas industry. Many of our members, from the largest major oil company to the smallest independents, operate on federal lands and contribute billions of dollars annually in production-specific taxes, royalties, rents, bonuses, and other revenue to the federal government. We hope that our comments are useful to your task. API believes that if implemented appropriately, USEITI could be the model for good governance and sustainable development for other countries where transparency is an issue. We look forward to engaging with DOI as the USEITI process moves forward. If you have any question related to these comments please contact Justin Spickard (202) 682-8420, SpickardJ@api.org.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. Isakower', with a long horizontal flourish extending to the right.

Kyle Isakower

Vice President, Regulatory and Economic Policy
American Petroleum Institute



Office of the Secretary
U.S. Department of the Interior
1801 Pennsylvania Avenue, NW, Suite 400
Washington, DC 20006

9 April 2012

Re: Docket No. ONRR-2012-002, "Notice Seeking Comment on the Extractive Industries Transparency Initiative"

To the Office of the Secretary,

We are pleased to submit the following in response to the notice from the Department of the Interior (the Department) seeking comment on U.S. implementation of the Extractive Industries Transparency Initiative (EITI).

The Revenue Watch Institute (RWI) is a non-profit policy institute and grant making organization that promotes the effective, transparent and accountable management of oil, gas and mineral resources for the public good. RWI helped found the EITI and supported the creation and growth of the international Publish What You Pay (PWYP) coalition, which champions revenue transparency around the world.

RWI's own work with EITI is focused on maximizing the positive impacts of EITI reporting on governance outcomes in implementing countries. To this end, we direct advocacy, research and analysis aimed at improving the quality and scope of EITI reports, and support civil society participation in implementation activities, through in-kind technical assistance, capacity-building and grant making. RWI has a strong commitment to the international sustainability of the EITI, as well as to supporting complementary legal and regulatory mechanisms that mandate greater transparency and accountability within oil, gas and mining industries.

We see U.S. implementation of EITI as a critical opportunity to improve the federal government's management and use of resource revenues, through increased public oversight of revenue collection efforts and a more transparent accounting of the value derived from U.S. public resources. Successful implementation, however, will be contingent on the Department's ability to establish a more open, interactive relationship with the public it serves, in particular through establishing an EITI multi-stakeholder group (MSG) that actively incorporates independent and informed civil society participation. We address here some of the necessary components of such a group, and some of the 'best practice' attributes of EITI implementation we hope the Department will consider as the U.S. prepares to apply for EITI candidacy.

1) Key Sectors and Stakeholders for Inclusion in the MSG

As the World Bank has noted, the EITI's "participative, multi-stakeholder approach" demands that "stakeholders outside of government – such as extractive industry companies and civil society organizations – are not just consulted as the Initiative progresses, but are actively involved in designing,

steering and governing the process.” Practically, this standard suggests that even basic decisions taken on the scope and goals of a country’s EITI program – such as which sectors it should target, and therefore which stakeholders its MSG must involve – should be made in consultation with a broad audience. This goal, in turn, is enabled by a commitment from government to conduct robust and proactive outreach to industry and to citizens, including and especially those most affected by extractive industry activity. The Department should take particular note of the World Bank’s advice that “the lack of a broadly defined [EITI] communications strategy runs the risk that key stakeholders will not know about, or engage in, the EITI process,” and that an effective communications strategy is one that “reaches out to as many people as possible.”¹

It is not clear that such a communications strategy has yet been established by the Department, nor that existing efforts at consultation have taken advantage of the federal government’s own internal resources – such as communications capacities, the contacts and networks available to DOI’s regional offices, and the services of the White House Office of Public Engagement. Until a more significant public media and outreach effort to publicize the government’s decision to launch EITI and intent to assemble an MSG is conducted, decisions on the composition of this group will remain premature. It is with this strong caveat in mind we make the following recommendations on sectors and stakeholders that might ideally be involved in MSG consultations.

a) Sectors

First, in terms of the sectors that should be represented in the MSG, at a minimum we suggest the involvement of oil, gas, coal and hard rock mining industry stakeholders.

Oil and gas receipts together dwarf collections from other minerals, and hold special political significance – related both to the environmental effects attending oil and natural gas production, and ongoing public debates over the tax and other incentives these industries receive. Despite its relatively smaller contribution to the federal budget coal too, is critical, as coal production on U.S. public lands accounts for over 40% of domestic production totals. Finally, hard rock mineral production deserves EITI’s attention, though in this case for the *lack* of financial benefit it has traditionally carried to the U.S. government under the General Mining Act of 1872; alternatively, if the new leasing and royalty arrangements for hard rock mining the Department has proposed in its FY2013 budget take effect, there will be even greater incentives for increased public oversight of this sector.

Finally, it is worth noting that stakeholders involved in the establishment of the MSG may wish to consider additional sectors, including forestry and renewable energy development, for inclusion in U.S. EITI. Forestry receipts have been considered in the ongoing development of EITI reports in a handful of implementing countries (including Ghana and Indonesia), and have already been disclosed through Liberia’s EITI. Renewable energy resources, while obviously not classified as ‘extractive industry’ resources, may yet account for a significant percentage of federal government receipts from energy production on U.S. public lands. Secretary Salazar recently cited their fiscal importance to U.S. citizens alongside of traditional energy resources without distinction, when he noted that “oil, gas, coal, renewable fuels and minerals that the Department of the Interior oversees belong to every American, and every American deserves a fair return from development.”²

¹ World Bank, *Implementing the Extractive Industries Transparency Initiative: Applying Early Lessons from the Field* (Washington, D.C: World Bank, 2008)

² See: <http://www.whitehouse.gov/blog/2011/10/25/leading-world-transparency-natural-resource-revenues>

b) Stakeholders

As for key stakeholders the Department must include in EITI implementation outreach, EITI's requirement of tripartite collaboration between government, companies and civil society will of course provide the backbone of whatever MSG is established.

Within this framework, we suggest that consultations with industry include outreach not only to a variety of sectors, but also to a diversity of operators (e.g. domestic and multinational entities, small companies and majors), to reflect the full picture and variation of natural resource production taking place on U.S. public lands. Civil society too, is not monolithic, and special care should be taken to ensure adequate outreach to a broad spectrum of stakeholders as consultation around the formation of the MSG continues. This outreach should prioritize capturing: (i) perspectives from producing regions around the country, especially where production comes with outsized social and environmental risks (e.g. in the Bakken region, the Gulf of Mexico, and in areas newly affected by natural gas development), (ii) representation from a diverse range of organizations and institutions (including those familiar with EITI and the state of U.S. minerals management, but also additional environmental and social groups, faith-based organizations, national and local media, institutional investors, budget and fiscal transparency advocates, government watchdogs, trade unions, academic institutions, etc.), and (iii) input from State and Indian groups and representatives with an interest in energy development, even in the instance that U.S. EITI applies only to revenue collection on federal lands.

Additionally, it is of special importance that those communities traditionally most directly affected by production on U.S. public lands are included in consultation processes. *We would note, for instance, that the Department has not yet conducted any public listening sessions in Louisiana, despite the obvious, demonstrated need for greater public oversight of federal offshore minerals management in the GOMESA region.*

2) Effective and Productive Processes for Convening the MSG

In keeping with the EITI Principle that “all stakeholders have important and relevant contributions to make”, the Department should ensure that all stakeholders have been meaningfully engaged in the process of convening of the MSG. Meaningful engagement means that each stakeholder constituency (government, companies and civil society) has been provided with sufficient time and resources: (a) to learn about the EITI implementation process and to consider the roles they might play in this process and (b) within the constituency, to organize a plan of EITI engagement, including regarding the selection of representatives in the MSG.

a) Information

While the four listening sessions that the Department has undertaken are a start in the stakeholder learning process, given the poor attendance at those sessions, the additional public comment period aimed at facilitating substantive input from a broader cross section of stakeholders will be an important next step. Best practice indicates that successful EITI implementation requires a substantial and sustained communications process. In organizing the additional public comment period, the Department should consult the EITI Good Practice Note on Effective EITI Communications, which underscores the importance of both a well-planned communications strategy and meetings with local communities, among other measures. The Note provides examples from other countries that highlight the importance of broad regional consultation (Liberia held meetings in 10 out of 15 counties) and on-going engagement (Kazakhstan held a series of regional meetings aimed at improving understanding and awareness of the

EITI with local stakeholders).³ Key information that should be disseminated in advance of and during the additional public comment period will be dealt with in greater detail in Section 4(a) below, as the meaningful engagement of stakeholders will also lay the groundwork for effective MSG collaboration.

b) Self-selection

Self-selection of civil society representatives in the MSG is also a well-established EITI policy. EITI Policy Note #6 (*Participation of civil society*) states: “Allowing civil society to self-appoint its own representatives on the multi-stakeholder group...is crucial to guarantee that the interests of civil society stakeholders are taken into consideration.”⁴ The Department should ensure that the process for convening the MSG in the U.S. complies with this policy and, thus, that civil society representatives have been selected by their respective constituency. In keeping with the EITI principle of transparency, each constituency should make public the process by which it selects its representatives.

3) Balance of Interests and Perspectives in the Formation of the MSG

In order for the MSG to accomplish a balance of interests and perspectives, each constituency will need to be fairly represented. At a minimum, fair representation entails (a) equal representation and (b) direct representation.

a) Equal Representation

Each stakeholder constituency should be represented in equal numbers in the MSG. This will facilitate each constituency having balanced access to the decision-making body, balanced voice in the decision-making process and a balanced opportunity to disseminate the outcomes of MSG activities to their respective networks. It should be noted, however, that balance of interests and perspectives will be impossible to achieve without also addressing the underlying resource disparities between the constituencies. These resource issues will be dealt with in greater detail in Section 4(b) below.

b) Direct Representation

Stakeholders should be represented by entities that are directly involved in the activities of each respective constituency. That is, representatives should be from companies engaged in the extractive industries, rather than from industry associations, and from civil society organizations involved in transparency or sector-related advocacy, rather than from lobbying organizations. The reason for this distinction is that indirect actors are not as effective in relaying the day-to-day concerns and realities of entities that are actually involved in these activities. Without direct representation, there is also a risk that the voices of constituencies that already benefit from more powerful and resource-rich associations will be unfairly amplified. Again, Section 4(b) will address such resource issues, as the fair representation of stakeholders is also fundamental to effective MSG collaboration.

4) Effective Collaboration by the MSG in order to Implement EITI

Building on the elements of meaningful engagement and fair representation noted above, the effective collaboration of the MSG will be contingent on all stakeholders (a) having a common knowledge base regarding the extractives landscape in the U.S. and (b) having access to the resources necessary to actively engage in the EITI implementation process.

³ See: <http://eiti.org/files/Good%20practices%20-%20Communications.pdf>

⁴ See: http://eiti.org/files/2011-11-01_2011_EITI_RULES.pdf

a) Access to Information

The MSG will be making crucial decisions about the scope of reporting templates and materiality thresholds, thus, all stakeholders need to have a clear understanding of the fundamental governance, commercial and social aspects of the sector so that they can fully assess the impact of these decisions. The Department should provide adequate information on the state of U.S. minerals management, including which agencies are involved, how oversight functions and where money flows. Information should also be provided on the key sectors, revenue flows and companies contributing to U.S. receipts. The provision of information on important social and environmental issues relevant to the sector is also important. Information about these topics should be disseminated in advance of and during the additional public comment period.

b) Access to Resources

For effective collaboration to occur, participants in the MSG, especially civil society representatives, must have sufficient resources to actively participate in the EITI implementation process, including as members of the MSG. EITI policy makes it clear that civil society participants need special support, given the relative resource scarcity of these participants compared to company and government participants. EITI Policy Note #6 (*Participation of civil society*) states: "Capacity development for civil society may be necessary to ensure it can take on an active implementing role. Due consideration should be paid to mitigating the impacts of technical and financial constraints on adequate civil society participation, including through facilitating their access to training and resources on matters relevant to participation in the EITI." The Department should facilitate civil society's access to technical and financial resources to enable attendance at key consultations/meetings, dissemination of materials and the provision of feedback on EITI implementation.

5) Key Attributes of a Successful MSG

A successful MSG will establish an implementation process that is thorough and responsive to public concerns. The MSG should be both representative and transparent.

a) Representation

The MSG is the central mechanism by which the EITI maintains legitimacy because it functions as a representative body linking the myriad stakeholders involved with the implementation process itself. Members of the MSG should represent their respective constituencies by seeking broad input in advance of making decisions, by keeping their constituencies abreast of the ongoing activities of the MSG and by widely disseminating materials produced by the MSG.

b) Transparency

The MSG should have transparent governance and operating principles. The MSG should establish policies that address the selection of members, decision-making processes, member turnover/term limits, committees and observer requirements. These policies should contain safeguards to ensure fair, balanced, and consistent participation. The MSG policies, along with the minutes of each MSG meeting, should be made publicly available.

6) Key Attributes of Successful EITI Implementation

Successful U.S. implementation of EITI will deliver new and useful information, to foster real accountability and improve public oversight of federal minerals management activities. This entails establishing a standard that will:

- a) **Be perceived as legitimate, for having convened the proper stakeholders and equipped them with adequate information to take decisions on the scope and function of U.S. EITI.** Providing for robust outreach to civil society in particular, along the lines described above, will help achieve this aim.
- b) **Build on existing disclosure standards to equip the U.S. public with new information on revenue collection from U.S. public lands production.** Congress has already mandated an expansion of the disclosures required of companies operating on federal lands, with Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, signed into law in July of 2010. While this provision has yet to be fully implemented in final securities rules, it established a statutory floor for oil, gas and mining company reporting that requires disaggregated disclosure of payments made by U.S. operators to the federal government. While ultimately the MSG will make decisions on the scope and coverage of U.S. EITI, we believe an EITI standard that complements (rather than undercuts) the reporting Congress has mandated would be most effective, and should, for instance: (i) require disaggregated reporting by company, (ii) utilize a robust materiality definition, and (iii) apply to the full range of resource development activities occurring on U.S. public lands.
- c) **Aid government oversight and compliance activities, by requiring reporting that aligns with the way revenues are collected by the Office of Natural Resources Revenue (ONRR).** To be effective, EITI reporting should match the way companies already report to ONRR – i.e. by lease, as they do under Form MMS-2014. ONRR staff have confirmed such reporting has the potential to aid the Department’s revenue collection efforts, and noted publicly last August that “if feasible, data should be reported at the lease level” under Section 1504 of the Dodd-Frank Act, so that this and other requirements can “provide a valuable cross-check for the data [ONRR] receives from resource companies, and help ensure that the Federal Government and American taxpayers are receiving the proper returns.”⁵ In Indonesia, project-level reporting was included in EITI templates for oil and gas companies for the pro forma reason that this is the level at which royalties and other fees are levied by the government on offshore production.
- d) **Raise public awareness of U.S. EITI, U.S. minerals management, and federal receipts from production taking place on U.S. public lands.** In order to deliver its full value, U.S. EITI must communicate information on its processes and data clearly, and to as wide an audience as possible. As the World Bank has noted, “the EITI process focuses heavily not just on the production of payments and revenue data and on a multi-stakeholder process, but also on assuring accountability by ensuring that citizens know about, understand and have a stake in the overall EITI program and the information it generates.”⁶ This will require a concerted effort from the Department to conduct stakeholder mapping and direct outreach and engagement; a dedicated EITI communications strategy; engagement on EITI progress and reporting from national and other media; and a commitment to building a highly publicized, user-friendly format for sharing EITI reports and other documents, in a sustainable and central database, ideally online.
- e) **Ensure a standard that is continually progressive and provides a review mechanism.** The EITI has been designed to reflect variation and the choices made by multi-stakeholder groups in various implementing countries. This reflects the fact that the EITI is not static, but rather a flexible standard that invites innovation and growth. The EITI Board is in the midst of a strategic review process which underlines this fact; new reporting criteria under consideration reflect the rising bar of international

⁵ See: Prael, Robert: U.S. Department of the Interior, Office of Natural Resources Revenue, letter to the SEC, August 4, 2011, at <http://sec.gov/comments/s7-42-10/s74210-108.pdf>

⁶ See World Bank, 2008

best practice for oil, gas and mining industry disclosure regimes. The U.S. should seek to be a leader in EITI reporting and establish processes for continually improving the reporting standards of U.S. EITI, after it has been launched.

7) Key Concerns Surrounding Implementation

If implemented thoughtfully, we believe U.S. EITI has the potential to: aid ongoing reform efforts at the Department and improve the management of U.S. public resources and revenues; provide a low-cost, high-impact process for communicating information to citizens on a key source of federal government income; encourage a more informed dialogue on U.S. energy issues and build public trust around federal minerals management; and help the U.S. lead the international community in EITI innovation and resource revenue transparency.

However these benefits are contingent on a process that fully and actively incorporates civil society participation, establishes a high bar for implementation, and institutionalizes EITI processes alongside of ongoing reform efforts at the Department.

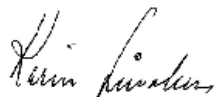
As detailed above, without proper consultation with a broad range of civil society stakeholders, U.S. EITI risks being derailed by a lack of participation and citizen perspectives. For EITI to fulfill the administration's goal of achieving more "participatory and collaborative" governance, a more interactive and open relationship with civil society, facilitated directly by the Department, will be necessary.

For EITI to improve revenue collection efforts, it must build on existing reporting standards and align with ONRR's own revenue collection systems. Under Secretary Salazar's leadership the Department has initiated a long overdue minerals management reform effort, and has stepped up revenue recovery efforts under the False Claims Act. However mismanagement and conflict of interest issues have a long, entrenched history within DOI, and it was only last year that the Government Accountability Office labeled the Department's management of federal oil and gas resources "a government-wide high risk issue."⁷ It is therefore critically important that throughout EITI implementation the Department is seen as a neutral broker, and that EITI reporting standards, once established, enable substantive and additive oversight of revenue collection efforts.

Finally, for EITI to offer sustainable benefits, the Initiative should be formalized through legal and/or regulatory processes that can assure it endures through political shifts and administrations. Many countries have passed EITI legislation, or enacted a more permanent regulatory basis for the Initiative, and the Department should investigate available options and encourage the U.S. to follow suit.

Thank you for this opportunity to comment. We appreciate the dedicated resources and high priority the Department has given to U.S. EITI, and look forward to continued dialogue as implementation progresses.

Sincerely,



Karin Lissakers
President, Revenue Watch Institute

⁷ GAO, *High Risk Series: an Update*, GAO-11-278 (Washington, D.C.: Feb. 16, 2011).

Publish What You Pay U.S. Response to Request for Comment on U.S. EITI April 9, 2012

The Publish What You Pay U.S. coalition commends the Department of Interior (DOI) on embarking on the process of implementing the Extractive Industry Transparency Initiative (EITI) in the United States.

Publish What You Pay (PWYP) is a global civil society coalition of over 600 organizations in 60 countries that campaigns for transparency in the payment, receipt and management of revenues from the oil, gas and mining industries. The PWYP US chapter comprises 34 independent member organizations, including development, faith-based, human rights, environmental, financial reform and anti-corruption organizations. They represent over 2.5 million constituents spread through every state in the nation.

The EITI forms a central component of our advocacy agenda. PWYP members helped to found the EITI at the global level in 2002, serves on the International Board of EITI, and its members serve on multi-stakeholder working groups in every EITI country.

We therefore welcome the opportunity to provide comments on the structure of the US EITI process. Individual PWYP US members may also submit comments, and these are meant to supplement and complement those. These comments summarize those voiced by coalition members in response to the Federal Register Notice, as well as the listening sessions, and individual discussions with Department of Interior (DOI). We expect that going forward, as US EITI activities become clear and additional analysis emerges from DOI on specific aspects of implementation, PWYP and its members will provide additional input.

1) Which are the key sectors and stakeholders that need to be involved in MSG?

At minimum, the initial scope of the initiative should reflect the reporting included in Section 1504 of the Dodd-Frank Act. This law enshrines EITI payment categories as the minimum disclosure regime for public oil, gas and mineral companies that file annual reports with the U.S. Securities and Exchange Commission (SEC), and operate on federal land.

The law covers all companies that make payments to the federal government for the “commercial development of oil, gas or minerals” and which also file an annual report with the SEC. This includes subsidiaries and “entities under the control of” the listed company.

Specifically, the law requires that companies disclose as part of their annual reports to the SEC,

- 1) the type and total amount of payments made for each project, and
- 2) the type and total amount of payments made to each government.

Companies will be required to report: taxes, royalties, fees (including license fees), production entitlements, and bonuses. The SEC will determine which other payments should also be included in these requirements, using the disclosures required by the EITI as a minimum baseline.

The statute is specific in requiring companies to electronically tag and identify their disclosures with the following:

- total amounts by category;
- currency used to make payments;
- financial period of the payment;
- business segment making the payments;

- government receiving the payment and its country;
- project to which the payment relates; and,
- other categories that SEC deems is “necessary or appropriate in the public interest or for the protection of investors.”

For the sake of efficiency and consistency, we recommend that DOI begin, at minimum, with an EITI that leverages and builds on these existing disclosure requirements. This would allow DOI to achieve the following important outcomes:

1) Leverage and utilize company reporting under Section 1504, as a model for reporting under EITI.

A large number of companies that will be required to report under Section 1504 operate on federal lands and make payments to the federal government. This includes, for example, many of the companies vying for shale gas plays, as well as those vying for oil leases in the Gulf and other areas offshore. For example, out of the 77 companies that participated in the Oil and Gas Lease Sale 213¹ in the Central Gulf of Mexico, about half will be required to report their payments under Section 1504. This includes national oil companies from Brazil (Petrobras) and Colombia (Ecopetrol). Given that these disclosures will use EITI payment categories as a minimum, there is much to be gained in terms of efficiency and cost reduction by exploring ways to leverage these existing disclosures. It is also important to note, that in the example of the Lease Sale 213, private companies from the U.S. as well as from Japan, Australia and Korea that bid, will not be required to report under Section 1504. The EITI provides an important opportunity to ensure transparency in payments to the federal government from these companies as well.

2) Leverage and build on the existing political, technical support from U.S. government, investors, and civil society for the Section 1504 disclosure regime.

The movement of stakeholders that supported the passing of Section 1504 was built over a number of years, and comprises a community of transparency supporters that is cognizant of the political, technical and communications opportunities and challenges that will arise as the US embarks on its EITI process. It is advisable for DOI to build on and leverage the support of these stakeholders to support implementation. For example, the political support from Congress and the Administration will be important to address questions regarding the inter-relationship between the MSG’s decision-making and the legislative and regulatory process. Investors will be important to engage, to identify ways that the information can be applied to investment decision-making. Civil society organizations, members of Congress, companies, investors and academics have been involved in commenting on the SEC’s rulemaking process, and can provide support on technical aspects of key issues related to EITI disclosure. Support from the various entities is listed with links to supportive statements below.

U.S. Administration Support:

- **President Obama:** United Nations Statement², Open Government Partnership statement.
- **State Department:**
 - Secretary of State Hillary Clinton³
 - Undersecretary of Economic Growth, Energy and Environment, Robert Hormats⁴

¹ See Final Bid Recap, available here <http://www.gomr.boemre.gov/homepg/lseale/213/213fbidrecap.pdf>

² Pres. Obama statement at United Nations available at <http://www.whitehouse.gov/the-press-office/2010/09/22/remarks-president-millennium-development-goals-summit-new-york-new-york>; statement at the Open Government Partnership available at <http://www.whitehouse.gov/the-press-office/2011/09/20/opening-remarks-president-obama-open-government-partnership>

³ Secretary Clinton statement of support available at: <http://sec.gov/comments/s7-42-10/s74210-262.pdf>

⁴ Statement of Undersecretary Hormats on the complementarity of Section 1504 and EITI at the EITI global conference in February 2011 available at <http://vimeo.com/21587461>

- Head of the State Department's Energy Resources Bureau and Special Envoy and Coordinator for International Energy Affairs, Ambassador Carlos Pascual
- **Treasury:** Secretary of the Treasury Timothy Geithner⁵
- **USAID:** Bureau for Economic Growth, Agriculture, and Trade⁶
- **Department of Interior:** The comment to the SEC from the Office of Natural Resources Revenue (ONRR) makes clear that Section 1504 disclosures could be leveraged for more efficient compliance work.⁷

Congress: Section 1504 supporters in Congress include senior Senators and Congressmen on Appropriations Committees and other committees. These lawmakers have made their support clear in public letters to the SEC, in their support of Section 1504 legislation, or in their support of the underlying legislation, the *Energy Security Through Transparency Act* (which also included implementation of US EITI)⁸. These include:

- **Senate**⁹:
 - Co-sponsors of Section 1504:
 - Senator Cardin (D-MD)
 - *Ranking Member*: Senator Lugar (R-IN), Senate Foreign Relations Committee
 - *Chairman*: Judiciary Committee - Senator Leahy (D-VT)
 - *Chairman*: Foreign Relations Committee - Senator Kerry (D-MA)
 - *Chairman*: Rules Committee - Senator Schumer (D-NY)
 - *Chairman*: Armed Services Committee - Senator Levin (D-MI)
 - *Chairman*: Permanent Subcommittee on Investigations – Senator Levin (D-MI)
- **House** (unless noted otherwise, the following have signaled support in a joint letter¹⁰ to the SEC):
 - *Ranking Member*: Barney Frank (D-MA) - Financial Services Committee
 - House Appropriations Committee:
 - *Ranking Member*: Norman Dicks (D-WA)
 - Senior member: Nancy Kaptur (D-MI)
 - *Ranking Member*: Financial Services and General Government Subcommittee– Jose Serrano (D-NY)
 - *Ranking Member*: State, Foreign Operations, and Related Program Subcommittee – Nita Lowey (D-NY)
 - Members, Interior, Environment and Related Agencies Subcommittee – Betty McCollum (D-MN), Jose Serrano (D-NY)
 - Member, Energy and Water Development and Related Agencies Subcommittee - John Olver (D-MA)¹¹
 - House Committee on Natural Resources
 - *Ranking Member*: Raul Grijalva (D-AZ)¹² - Subcommittee on National Parks, Forests and Public Lands
 - House Energy & Commerce Committee

⁵ Geithner statement made in Senate Foreign Relations Committee hearing available at http://www.youtube.com/watch?v=bIrlbDdXTpA&lr=1&uid=Stnj_26j8OAiGKaUIUBmbA

⁶ USAID letter to SEC available at <http://sec.gov/comments/s7-42-10/s74210-101.pdf>

⁷ ONRR comment to SEC available at <http://sec.gov/comments/s7-42-10/s74210-108.pdf>

⁸ See *Energy Security Through Transparency Act* of September 2009 available at: <http://thomas.loc.gov/cgi-bin/query/z?c111:S.1700>

⁹ Senate letter to SEC available at <http://www.sec.gov/comments/s7-42-10/s74210-122.pdf>

¹⁰ House letter to SEC with the total of 14 co-signers available at <http://sec.gov/comments/s7-42-10/s74210-162.pdf>

¹¹ See forthcoming Olver letter to SEC available at <http://www.sec.gov/comments/s7-42-10/s74210.shtml>

¹² See Grijalva letter to SEC available at <http://sec.gov/comments/s7-42-10/s74210-120.pdf>

- *Ranking Member:* Henry Waxman (D-CA)

Investors: A number of important investors, both U.S. and foreign, have been active in advocating for Section 1504 in Congress and with the SEC. For example, investors with assets under management of over \$1.2 trillion wrote in support of Section 1504 to the SEC. This included CalPERS¹³, the largest public pension fund in the United States, as well as TIAA-CREF¹⁴, CalSTRS¹⁵, and others. This also included support from the Social Investment Forum (SIF)¹⁶, the U.S. membership association of investors and professionals engaged in the practice of sustainable investing. According to SIF, investments that consider environmental, social and corporate governance criteria in the United States topped \$3 trillion in 2009.¹⁷

Civil Society: PWYP coalition member organizations worked for about 5 years in Washington and around the country to support the passage of what ultimately became Section 1504. US EITI implementation was a complementary component of PWYP's legislative ask, which is reflected in the underlying legislation for Section 1504, which includes a "Sense of Congress" provision for US EITI implementation.¹⁸ This work has comprised significant investment in technical analysis, Congressional testimony and hearings, grassroots and Congressional advocacy, as well as advocacy with both the Bush and Obama Administrations¹⁹. The coalition is therefore an important ally in supporting the implementation process.

To engage and leverage the support of these stakeholders, it will be essential to make clear the links and complementarity between Section 1504 and US EITI implementation.

2) How should the MSG be convened?

- At minimum, DOI should follow the elements included in EITI Requirement 4 (establishing an MSG), including the recommendations to undertake a stakeholder assessment, and establish a legal basis for the group. (See also response to Question 6 below.)
- The participants should be convened through a self-selection process.

3) What leads to effective MSG collaboration?

- **Exemplary leadership by the implementing government:**
 - **Effective, transparent, and independent leadership by DOI that adheres to EITI rules.** In particular, DOI must demonstrate proficiency in applying EITI Requirement 6 (civil society participation) and Requirement 8 (removing obstacles to EITI implementation).
 - **Clarity in the roles and inter-action among USG agencies, and assurance of a "checks and balances" approach within USG agencies.** For example, including the participation of the Government Accountability Office (GAO) would be recommended.
- **Ensuring education of MSG members to ensure equal understanding of minimum requirements established by the EITI Rules.**

¹³ See CalPERS letter to SEC available at <http://sec.gov/comments/s7-42-10/s74210-32.pdf>

¹⁴ See TIAA-CREF letter to SEC available at <http://sec.gov/comments/s7-42-10/s74210-54.pdf>

¹⁵ See CalSTRS letter to SEC available at <http://sec.gov/comments/s7-42-10/s74210-59.pdf>

¹⁶ See SIF letter to SEC available at <http://www.sec.gov/comments/s7-42-10/s74210-57.pdf>

¹⁷ See <http://www.socialinvest.org/news/releases/pressrelease.cfm?id=168>.

¹⁸ See for example, the *Energy Security Through Transparency Act* of September 2009, which includes a Sense of Congress provision that the US should implement EITI. Available at: <http://thomas.loc.gov/cgi-bin/query/z?c111:S.1700>:

¹⁹ See, for example, PWYP US's 2009 letter to President Obama available at <http://pwypusa.org/sites/default/files/CEO%20Letter%20to%20Obama%20on%20EITI%20%26%20EITD%202009.pdf>

- **An effective communications strategy and apparatus is established for US EITI purposes, and incorporated into DOI.** Communication needs should be guided, in part, by EITI Requirement 6 and should include:
 - Easy to access, well-organized and presented information on the state of U.S. minerals management, companies involved, sectors and revenue flows contributing to U.S. receipts, etc.
 - Adequate resources, modern, innovative tools and capacity for DOI to communicate with the MSG and stakeholders.
 - Resources/support for MSG communications, and for organizing and collaborating within and among constituencies.
- **Well-resourced and active civil society participants.** As compared to company and government participants, civil society will require special support to participate, and resources should be identified for this purpose (identifying sources of funding is included in EITI Requirement 5).
- **Industry that is committed to the objectives and principles of the EITI, and is not at the table to maintain the status quo or slow the process.** (See EITI Requirement 4 Point H.IV.)

4) How best can a balance of interests and perspectives be achieved in formation of MSG?

- **The MSG should reflect the stakeholders that represent the minimum scope of the US EITI process.** See recommendation made in response to Question 1 above. In the scenario we recommend, the stakeholders should reflect geographic diversity that captures, for example, the location of federal land lessees making payments to the US government, and the diversity of commodities captured by Section 1504 reporting.
- **There should be fair and equal representation from each of the parties.**
- **Each MSG member should represent their own interests.** For example, lobby or business groups should not stand in for companies. Companies that will report under EITI should participate directly to discuss reporting templates and issues of scope, etc. Associations could participate as observers, for example, at selected meetings.

5) What are the key attributes of a successful and high-functioning MSG and successful EITI implementation?

- **Legitimacy.** For the MSG to function well, it must have legitimacy with EITI stakeholders as well as the broader public. This legitimacy is tied to the ability of the process to demonstrate that it has been inclusive and representative in the preparatory steps, such as consultations and formation of the MSG. It is tied to the adherence to EITI's minimum requirements, and to demonstrating leadership and innovation. It is also tied to DOI's ability to establish trust and to demonstrate proactive leadership in addressing issues that would threaten legitimacy. For example, for the EITI to succeed, it is critical that DOI have the trust of all parties involved in the process. Attaining and maintaining the trust of civil society organizations and public will be particularly important in order to ensure the fulfillment of EITI requirements regarding "full, independent, active and effective" civil society participation. For example, there is a history of public mistrust of DOI related to issues of conflicts of interest, and the "revolving door" between DOI and regulated entities and their associations. DOI has taken important steps in the last several years to address these issues. These changes are relatively recent, however, and progress remains to be made to reassure the public. It is crucial that DOI acknowledge this challenge and analyze the risks it may present to the EITI process. To build trust and legitimacy, we encourage DOI to acknowledge these challenges publicly and demonstrate proactive steps it will take to address them. Additional issues to address included in response to Question 6 below.

- **Transparent governance and operating principles.** The roles of the MSG, and its participants, and the rules of engagement in the process must be clear and publicized.
- **Thorough understanding of the EITI Rules, and adherence thereof.** MSG members, especially USG participants, must demonstrate an understanding of the EITI rules and the areas where national EITI processes have discretion to innovate. This will support the decision-making function of the MSG, ensure that MSG members work from shared understanding and establish the basis for more effective collaboration and negotiation. It will also allow MSG members to serve as effective “ambassadors” of the initiative to outside stakeholders by ensuring that information communicated about the initiative is accurate. This in turn, will support the legitimacy of the US process, and the EITI as a whole.
- **Decision-making authority and transparency regarding that authority.** The MSG must have the ability to make decisions that will “stick”. Participants must understand the scope of their decision-making authority. It is important that this understanding and the associated expectations of their role be clear before groups are invited to volunteer their time to serve on the MSG. Conversely, government agencies and regulated entities must have clarity on the role of the MSG, its decision-making authority and its inter-play with existing regulatory requirements. Any obstacles, per EITI Requirement 8, must be removed.
- **Leveraging existing USG communication and technical assets.** To be cost-effective and efficient, DOI and other USG agencies participating in the process should leverage combined communications and technical resources to support and supplement the process. For example, the systems and protocols used to communicate with civil society at national and grassroots levels employed by the White House, Environmental Protection Agency and through the Open Government Partnership could be leveraged to ensure stakeholders are informed about US EITI. We encourage a mapping of such systems across government, to identify those that can be leveraged.

6) What are our key concerns about implementation?

- **Ensuring that DOI demonstrates leadership in the initiative by tackling complex or controversial issues head on.** By “tackling” we mean conducting thorough analysis, outlining scenarios and options for action related to those issues, the opportunities and challenges related to those options, and communicating the analysis and the options for stakeholders. This will demonstrate DOI’s leadership in the process, and help to frame discussions that will support DOI’s positions and the positions of the MSG.

Immediate issues to address include:

- 1) The inter-play between the US EITI and Section 1504 disclosure requirements;
- 2) Legal options and obstacles to ensure the MSG can operate as a decision-making body; and,
- 3) Legal, regulatory and other obstacles that the MSG will need to address in order to adhere to the EITI Rules (regardless of scope).

Any of the issues listed below can also be considered important to merit proactive analysis and discussion.

- **Ensuring that USG participation is independent and perceived as independent of undue industry influence.** As noted above, public confidence in DOI remains in need of strengthening. The US EITI provides an important opportunity to identify areas where public confidence is weak, and to identify ways that this can be strengthened. For the success and legitimacy of US EITI, it is essential that the DOI address the perception that it is likely to side

with industry interests, particularly in regards to the implementation of Section 1504. This perception is damaging to the legitimacy of the initiative, and the crucial leadership role of DOI. A thorough analysis of the inter-play between US EITI and Section 1504, and the areas of complementarity that DOI will leverage, if shared with the public and discussed, would be helpful in addressing these concerns.

- **Maintaining the initiative and its associated funding through any future changes in U.S. Administration or Congress.**
- **Ensuring that communication about the initiative is effective, innovative and broad-based, and includes civil society participation as required in EITI Requirement 6 (civil society participation).** See above for recommendation regarding leveraging existing USG resources. Communicating through the DOI website and through the Federal Register is not sufficient. Resources such as social networking tools, listserves, video, webcasts, podcasts and other tools, if used effectively, are relatively low cost methods for reaching a wide audience. However, the use of these tools must be guided by a comprehensive, modern communication strategy. We encourage DOI to consider upfront investments in developing a comprehensive and results-driven communications strategy.
- **Ensuring that incentive structures are established within DOI and other government agencies for a high-quality implementation of the EITI process.** Conversely, ensuring that disincentives to a high-quality implementation (or incentives to adhere to the status quo) are identified and removed. This will help to drive the internal momentum for innovative results and can help to establish and maintain the public legitimacy of the initiative.
- **It is crucial that the US be a leader in implementation.** There are over 30 other countries implementing the EITI, and the US approach to implementation could have important impacts in improving and furthering transparency innovation around the world, and setting a global standard. It is therefore essential that the US demonstrate innovation and leadership. This includes innovation in the application of the rules, as well as the communication strategies and technologies used to ensure public knowledge and involvement in the initiative.

Please do not hesitate to let us know if we can answer questions regarding our comments. We look forward to working with you on the US EITI implementation.

Contact:

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PWYP US Member list: <http://pwypusa.org/take-action>



April 9, 2012

EITI Comments
c/o U.S. Department of the Interior
1801 Pennsylvania Ave NW, Suite 400
Washington, DC 20006

Dear Sir/Madam:

The National Mining Association (NMA) appreciates the opportunity to provide comments in response to the Department of the Interior's (DOI) request for input on the United States' implementation of the Extractive Industries Transparency Initiative (EITI). 77 Fed. Reg. 11151. (Feb. 24, 2012). In September 2011, President Barack Obama indicated that one of his Open Government Partnership (OGP) action items was to commit the U.S. to EITI, an international initiative designed to improve transparency and accountability in the extractives industry sector. Specifically, EITI was founded in 2002 to promote better governance in resource-rich underdeveloped nations and to allow citizens to monitor payments that have been associated with corruption or waste in many countries.

INTRODUCTION

NMA is the national trade association representing the producers of most of America's coal, metals, industrial and agricultural minerals; the manufacturers of mining and mineral processing machinery, equipment and supplies; and engineering, transportation, financial and other businesses that serve the mining industry. As the trade association of one of the key U.S. extractive industries, NMA has a strong interest in the implementation of EITI in the U.S. A number of NMA members are official supporters of EITI. Additionally, many NMA members have operations in EITI countries and as such, have experience with the EITI process and the benefits it can provide. NMA and its members support EITI's goal of transparency in payments to governments. To this end, NMA has already taken the initiative to convene representatives from all three stakeholders to ensure a cohesive start that will result in a seamless and successful U.S. EITI implementation.

In fact, NMA believes that much of the information traditionally sought in the EITI process is already reported in the U.S. As accurately stated in the OGP *National Action Plan for the United States of America*, (Action Plan) "industry already provides the

Federal Government with this data.” Thus, a goal of U.S. participation is to “share it with all of our citizens.” The Action Plan appears to provide a workable approach for the U.S. to move toward EITI compliance. It indicates that the government “will work with industry and citizens to develop a **sensible** plan over the next two years for disclosing **relevant information** and enhancing the accountability and transparency of our revenue collection efforts.” (Emphasis added) OGP National Action Plan, p. 6. As such, for U.S. implementation, EITI should not require additional reporting but instead ensure the transparency of what extractive industries do report.

As we understand it, the U.S. goal in committing to be among the first developed countries to implement EITI is primarily to play a leading role in the global effort for transparency and to provide a model for developed and developing countries moving forward rather than to address any specific issues of corruption in the U.S. As Secretary of the Interior, Ken Salazar, the senior official responsible for oversight of U.S. implementation recently opined:

In many ways the U.S. is now among the world leaders in transparency for royalty and revenue collections. By playing a central role in EITI, we can share best practices that will help governments, companies and civil societies around the world manage their resources responsibly.

October 2011 White House Blog, “Leading the World in Transparency in Natural Resources Revenues,” Ken Salazar (Available at <http://www.whitehouse.gov/blog/2011/10/25/leading-world-transparency-natural-resource-revenues>)

POTENTIAL CONCERNS WITH EITI IMPLEMENTATION

As noted, NMA and its members support EITI’s goal of increased transparency in payments to governments. How those goals are implemented are of concern as outlined below.

Scope of reporting:

First and foremost, the EITI reporting should avoid duplication of the existing robust reporting by extractive industries in the U.S. Additional burdens should not be placed on the mining industry as the current reporting and accounting for payments flowing to the U.S. federal government for minerals on federal lands should be sufficient for EITI purposes. The extractive activities in the U.S. that generate the most significant and direct payments to the federal government are those activities that take place on federal lands. The choice of Secretary Salazar as the key official to oversee the U.S. implementation of EITI is logical given DOI’s management of natural resources on much of our nation’s public lands and provides an additional justification for limiting the reporting requirements to such lands.

Furthermore, a narrowly tailored reporting focus is essential to ensuring the U.S. can meet the deadlines for becoming EITI compliant. Alignment and consolidation of existing reporting could be done in the two year timeframe to move from a candidate country to a compliant country. Expanding the reporting requirements to deal with other land situations (e.g., state or tribal lands) or other revenues, however, would be a much more complex approach that would not likely be feasible in that timeframe.

Inclusion of a materiality, *de minimis*, or threshold value also would prevent EITI reporting implementation from becoming too unwieldy. As emphasized in the President's ONG Action Plan, data gathered through the EITI process should be sensible and relevant. Thus, duplication and overly burdensome requirements that require unnecessary detail should be avoided. One potential method for limiting unnecessary information was raised by a representative of the DOI contractor, CBI, who suggested that EITI reporting could be limited to companies with activities on public lands whose payments meet a \$1 million threshold. The rationale for the potential limitation was that according to the DOI Office of Natural Resources Revenue, approximately 95 percent of the payments collected from extractive industries with operations on public lands are from companies with payments in excess of \$1 million.

Interaction with the Dodd Frank Act

There is a rulemaking effort underway at the Securities and Exchange Commission (SEC) to implement section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which also requires disclosure of payments by resource extraction issuers. Obviously, there is potential for significant overlap and confusion between the EITI and SEC efforts to increase transparency of payments to governments. NMA believes that such problems could be avoided if stakeholders recollect Congress' directive that "the rules issued under [Dodd Frank 1504] shall support the commitment of the federal government to international transparency promotion efforts relating to the commercial development of oil, natural gas or minerals."

The EITI process should move forward prior to the SEC publishing final rules implementing section 1504. Such an approach would allow SEC to align the section 1504 scope of disclosure as close as practicable with the EITI, to which it is explicitly tied. This is consistent with section 1504 that is explicitly tied to the EITI, as for example in the definition of payment in section 1504(q)(1)(c)(ii) to include "... taxes, royalties, fees . . . and other material benefits, that the commission, consistent with the guidelines of the Extractive Industries Transparency Initiative (to the extent practicable), determines are part of the commonly recognized revenue stream for the commercial development of oil, gas or minerals." As discussed below, the EITI process has many advantages over a SEC rulemaking and once the EITI process is finalized, the SEC's final rules could recognize reporting under the EITI regime as compliance with the

requirements under section 1504 to report all payments made to the federal government for the purpose of commercial development of oil, gas or minerals.

Advantages of the EITI process over section 1540 include increased transparency, engagement of stakeholders and decision-making by consensus as opposed to agency fiat. The ability of the mining industry to participate in the multi-stakeholder group (MSG) responsible for the design of the U.S. EITI framework and its implementation provides an opportunity to design a reporting system that is effective while not being overly burdensome or duplicative. The MSG is a unique vehicle, with an unusual level of independence, as the federal government is a participant in the group and decisions are reached by consensus rather than set forth by government agencies. Since the MSG is made up of representatives of key sectors or stakeholders of the implementing country, the design of each EITI framework is country specific, allowing the flexibility to tailor U.S. EITI to the U.S. goals for the initiative and reflect direct input from key stakeholders. Moreover, SEC Chairman Mary Shapiro has acknowledged that, with respect to the specialized disclosure provisions of the Dodd-Frank Act, “expertise about these events does not reside within the Commission or our staff.”¹ Thus, SEC rulemaking itself would benefit from guidance that would come from an informed and consensus-driven regime. Toward that end, it would be appropriate for DOI to confer with the SEC about deferring the 1504 rulemaking to allow proper alignment of the SEC regulations with EITI.

Outstanding Jurisdictional Questions

While we recognize the above-mentioned advantages of EITI, there are questions to be answered to provide industry the assurances that EITI will be workable in the U.S. Certain jurisdictional issues and questions of authority need to be answered, particularly given the unique nature of the MSG and its ability to set requirements for U.S. companies. The approach, in many ways, is the antithesis of the norm of Congress passing a law, the President signing the law, and an agency implementing law through regulations that are subject to public notice and comment. These issues are likely not insurmountable but should be addressed prior to spending significant time and resources on U.S. EITI implementation.

COMMENTS ON FORMATION OF THE MULTI-STAKEHOLDER GROUP

The DOI notice specifically requests comments on the formation of the MSG. As a preliminary matter, NMA requests to be allocated an appropriate number of seats on the MSG. Having the national association participate is critical in providing representation for the wide variety of NMA members: large, small, hardrock, coal and other leasable minerals, publicly traded, private, multi-national, and strictly domestic.

¹See Speech by SEC Chairman, Statement at SEC Open Meeting, Wednesday, December 15, 2010, U.S. Securities and Exchange Commission, available at <http://sec.gov/news/speech/2010/spch121510mls-2.htm>.

While the MSG is composed of the three critical sectors, government, industry and civil society, for U.S. implementation, it makes sense to allow enhanced input in the MSG by the mining industry to recognize the diversity of the U.S. mining industry. Moreover, the MSG would benefit from the involvement of mining companies that have participated in the EITI process since its inception.

CONCLUSION

NMA appreciates the opportunity to provide its views on this very important initiative. U.S. implementation of EITI holds the promise of both national and international benefits. However, steps toward EITI compliance must be properly structured to prevent the initiative from becoming overly duplicative, burdensome and complex, which could be unsustainable in the long term. Consistent with U.S. goals to show our leadership in transparency and given the fact that existing U.S. requirements address commonly recognized reporting streams from the commercial development of minerals, our EITI approach should rely significantly on our existing reporting structure.

NMA's participation in the MSG would help ensure the representation of a wide variety of mining companies and appropriately give the mining industry a voice in EITI implementation. If you have any questions regarding these comments, please contact Katie Sweeney or Veronika Kohler at 202/463-2600.

Sincerely,

A handwritten signature in black ink that reads "Katie Sweeney". The signature is written in a cursive, flowing style.

Katie Sweeney
General Counsel